

August 17, 2005

Paul C. Besozzi
(202) 457-5292
pbesozzi@pattonboggs.com

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: WC Docket No. 04-30 – Emergency Request for Declaratory Ruling – Additional
Ex Parte Filing By Gemini Networks CT, Inc. (“Gemini”) – Report of
Undisclosed Ex Parte Contacts**

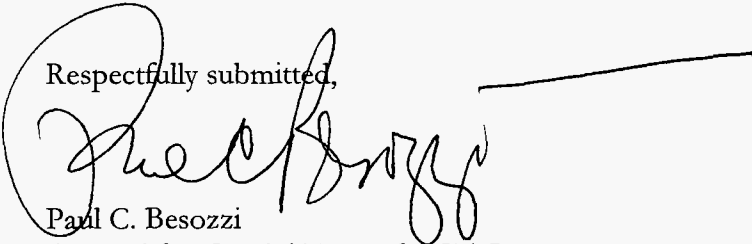
Dear Ms. Dortch:

On July 15, 2005, Gemini filed the attached *ex parte* communication in this Docket, asking that the Commission initiate an investigation into “any...exchanges that may have occurred between Commissioner Goldberg’s Staff and the FCC Staff on the outcome of this matter.” A copy of Gemini’s July 15 submission is attached.

Gemini submits this further *ex parte* simply to inquire what, if any, action the Commission has taken to date on its July 15 request. Gemini continues to believe that such an inquiry is essential to preserve the integrity of the Commission’s processes.

Pursuant to Section 1.1206(b) of the Commission’s rules, this letter is being electronically filed through the ECFS.

Respectfully submitted,


Paul C. Besozzi
Counsel for Gemini Networks CT, Inc.

cc: Office of Chairman Martin
Office of Commissioner Abernathy
Office of Commissioner Copps
Office of Commissioner Adelstein
Office of the General Counsel
Wireline Competition Bureau

July 15, 2005

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Ex Parte Filing By Gemini Networks CT, Inc. (“Gemini”) – Report of
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Dear Ms. Dortch:

Gemini makes this further ex parte submission in response to the July 11, 2005 filing made by Commissioner Jack R. Goldberg of the Connecticut Department of Public Utility Control (“DPUC”). Commissioner Goldberg’s recent filing states that it is “provided in response to” the letter submitted by Gemini on June 24, 2005 regarding a report of undisclosed ex parte contacts in this Docket.

First, it is ironic that Mr. Goldberg would file his response, proclaiming that his conceded remark to a news reporter for the Hartford Courant about conversations with FCC Staff had been misconstrued, on the very day that the Governor of Connecticut vetoed the anti-Gemini legislation which Gemini respectfully believes was in part a by-product of those conversations. It is clear to Gemini from the original Courant report, and the events described therein, that the insertion of the anti-Gemini provision by State Senator John Fonfara was based upon Mr. Goldberg’s representation to Mr. Fonfara “several times that SBC was likely to prevail” in this matter.

Second, in vetoing the bill, despite its overwhelming passage by the Connecticut legislature, Governor M. Jodi Rell found that the allegations relating to Mr. Goldberg’s involvement in the legislation “raised grave concerns relating to the bill, warranting investigation by an independent agency.”¹ Unfortunately, the State Ethics Commission concluded, and the Judicial Review Council preliminarily concluded, that each did not have jurisdiction over the matter. The Judicial Review Council, however, will finally address this issue on July 20. Further, Gemini understands that the Attorney General of the State of Connecticut is conducting an investigation. In any case, there has been no determination on the merits concerning the propriety of Mr. Goldberg’s

¹ A copy of Governor Rell’s Press Release and Veto Message is attached as Exhibit 1 (“Veto Message”).

Ms. Marlene H. Dortch

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activities. Indeed, Governor Rell's veto message specifically rests upon "unresolved questions concerning" the legislation.²

Third, Mr. Goldberg's filing concedes that there was a conversation between his staff and the FCC staff, but claims that the "then FCC staff member" made "a causal remark" in a conversation that lasted but "one or two minutes." That "casual remark" was the basis for his expectation that the FCC was going to grant the SBC petition in this docket. Mr. Goldberg, at least, admits that there was a conversation and that, whether "casual" or not, it included communications about the expected outcome of a still pending docket.³

This Docket is a permit-but-disclose proceeding under Section 1.1206 of the Commission's Rules. Mr. Goldberg's recent filing does nothing to dispel the conclusion that this allegedly brief conversation was far more than a mere status check, but involved a substantive communication about the likely outcome of the FCC's action, at a time when the docket is still pending. Therefore, it should have been disclosed.

Mr. Goldberg's filing clearly confirms the Hartford Courant report that was the basis for Gemini's June 24 ex parte submission. As a result, the Commission, if its own processes are to continue to meet the high standards set by its Rules and the Commissioners themselves, must promptly investigate this and any other exchanges that may have occurred between Commissioner Goldberg's Staff and the FCC Staff on the outcome of this matter. Such an investigation is necessary, just as was Governor Rell's veto, "to preserve the integrity" of the Commission's processes. More specifically, the Commission should determine who was the "former FCC staff member" who Mr. Goldberg states made the remark, what was his/her position, what role, if any, did the person played in connection with the pending SBC petition, when the person left the Commission and for whom the person now works. If it turns out that the person now works for SBC, then the Commission should investigate whether there were any discussions relating to employment while the person was on the FCC Staff, the substance and timing of those discussions and with whom at SBC the person conducted those discussions. Again, the Commission must undertake this effort to ensure the continued integrity of its operations and processes and the public confidence in the same.

² See *Veto Message*, at p. 3.

³ Presumably it was also the basis for his reported advice to State Senator John Fonfara that "SBC was likely to persuade federal regulators" to grant the Petition. See Exhibit 2.



Ms. Marlene H. Dortch

July 15, 2005

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Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being electronically filed through the ECFS.

Respectfully submitted,

A handwritten signature in cursive script, reading 'Paul C. Besozzi', with a long horizontal line extending from the end of the signature.

Paul C. Besozzi

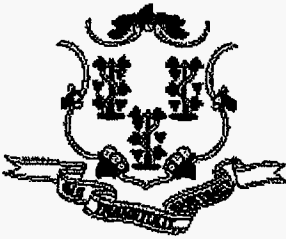
Counsel for Gemini Networks CT, Inc.

cc: Office of Chairman Martin
 Office of Commissioner Abernathy
 Office of Commissioner Copps
 Office of Commissioner Adelstein
 Office of the General Counsel

The Office of Governor M. Jodi Rell

Press Releases - 07/2005

EXHIBIT 1



M. JODI RELL
GOVERNOR

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS
HARTFORD, CONNECTICUT 06106

FOR IMMEDIATE RELEASE
July 11, 2005

Contact: Dennis Schain
860-524-7313
dennis.schain@po.state.ct.us

Governor Rell Vetoes Telecommunications Bill *Concerned About Legislative Process; Urges New Bill Next Year*

Governor M. Jodi Rell today vetoed a telecommunications bill passed by the 2005 General Assembly, saying enough questions had been raised about the process by which the legislation was adopted to prompt a veto. At the same time, the Governor urged to 2006 General Assembly to approve a new version of the measure, which she said she would sign.

The bill, Senate Bill 1097, *An Act Concerning Regulation of Telecommunications Services*, was easily approved by the General Assembly this year – 36-0 in the Senate and 144-4 in the House of Representatives. But questions were immediately raised following passage about the propriety of the participation of a Department of Public Utility Control Commissioner while the bill was working its way through the legislative process.

Governor Rell had asked the State Ethics Commission and the state Judicial Review Council for an opinion on the Commissioner's participation. The Ethics Commission said that it had no jurisdiction over the matter and the Judicial Review Council will not take up the question until a meeting on July 20.

Because today (July 11) is the deadline for her decision on the bill, the Governor said in her veto message, "I must exercise caution and act in such a way as to preserve the integrity of the legislative process and Connecticut laws by disapproving of Senate Bill 1097.

"The conduct of state officials in a manner reflecting the highest regard for ethics and integrity has been a hallmark of my administration," Governor Rell said, adding that she was not passing judgment on the Commissioner's conduct. "In light of the unresolved questions concerning this legislation, I believe it is preferable to veto Senate Bill 1097 – offering the General Assembly in the next legislative session the opportunity to ratify its action in passing the bill."

Shortly after the bill was passed, Governor Rell received a letter from an attorney for Gemini Networks CT Inc., raising questions about the participation of a DPUC Commissioner in discussions about the bill. The letter claimed that the Commissioner should not have been involved because two

other matters involving Gemini were already pending before him. The Commissioner had been asked to participate by the Senate Chairman of the General Assembly's Energy and Technology Committee.

Under current law, the DPUC must order a telephone company to "unbundle" its network, under certain circumstances, to make its components available to the company's competitors. Senate Bill 1097 bill exempts the company's hybrid fiber coaxial facilities or networks from unbundling unless specifically ordered by the Federal Communications Commission.

Gemini had been seeking to buy SBC's hybrid fiber coaxial network and was prevented from doing so under Senate Bill 1097.

Attached is the Governor's Veto Message:

July 11, 2005

The Honorable Susan Bysiewicz
Secretary of the State
30 Trinity Street
Hartford, CT 06115-0470

Dear Madam Secretary:

I am hereby returning without my signature Senate Bill 1097, *An Act Concerning Regulation of Telecommunications Services*. The propriety of the conduct and participation of a Commissioner of the Department of Public Utility Control in the legislative process leading to the bill has been questioned and an independent review of that conduct has not been concluded. As no independent determination has been made on the alleged impropriety, I must exercise caution and act in such a way as to preserve the integrity of the legislative process and Connecticut's laws by disapproving of Senate Bill 1097.

Soon after passage of the bill by the General Assembly, my office received a letter written by the legal counsel to Gemini Networks CT, Inc. ("Gemini") stating reasons why I should consider vetoing Senate Bill 1097. The letter alleged that the involvement of a Department of Public Utility Control Commissioner in the negotiations and agreements relating to Senate Bill 1097, during the pendency of appeals of contested dockets and an ongoing arbitration, constituted a violation of the Uniform Administrative Procedure Act, Department of Public Utility Control regulations and the canons of judicial ethics. The allegations included an inference that the Commissioner's conduct resulted in the text of the bill being amended to the detriment of a party to a proceeding over which the Commissioner presided.

I found that the allegations in the letter raised grave concerns relating to the bill, warranting investigation by an independent entity. As a result, I requested the State Ethics Commission review the issues raised by Gemini's counsel on an expedited basis. Noting that absent allegations or evidence of an inappropriate financial interest by the commissioner in the matter, the Ethics Commission stated that it did not have jurisdiction to consider the questions raised by Gemini's lawyer, including allegations regarding the canons of judicial ethics. As the Ethics Commission noted, Gemini's counsel claimed no allegation or evidence of an inappropriate financial interest. The Ethics Commission suggested that the letter by Gemini's attorney be provided to the Judicial Review Council. By statute, the Judicial Review Council is empowered under certain situations to investigate allegations of violations of the Canons of Judicial Conduct.

I then sought further review of the matter by the Judicial Review Council. As a result of my inquiry, Council staff made a preliminary determination that the Council had no jurisdiction or statutory authority over the issues presented by Gemini's legal counsel. The initial determination of the Council's staff was that the Council's statutory authority extends to judges of Connecticut's Superior, Appellate and Supreme Courts, workers' compensation commissioners and family support magistrates, but not Department of Public Utility Control Commissioners. Although I received the preliminary determination from the Council's staff within several days of my request for action, the Council is scheduled to meet on July 20, 2005, to give final consideration to the matter.

By law I must consider and act upon Senate Bill 1097 by July 11, 2005, nine days before the Council's meeting. The conduct of state officials in a manner reflecting the highest regard for ethics and integrity has been a hallmark of my administration. It is my responsibility as the constitutional officer empowered to sign bills into law to seek a review of the questions raised by Gemini's legal counsel. Statutory constraints and jurisdictional limitations imposed by Connecticut's constitution and statutes have frustrated my attempts to ensure that an independent review of the commissioner's conduct within the legislative process is performed in a timely manner. The commissioner referred to by Gemini's lawyer is properly regarded as an expert on telecommunications issues and his conduct has never before been called in question. However, in light of the unresolved questions concerning this legislation, I believe it is preferable to veto Senate Bill 1097 – offering the General Assembly in the next legislative session the opportunity to ratify its action in passing the bill.

For the reasons stated herein, I disapprove of Senate Bill 1097, *An Act Concerning Regulation of Telecommunications Services*. Pursuant to Article Four, Section 15 of the Constitution of the State of Connecticut and Article III of the Amendments to the Constitution of the State of Connecticut, I am returning this bill without my signature.

Very truly yours,

M. JODI REL
Governor

Content Last Modified on 7/11/2005 6:28:28 PM

EXHIBIT 2

courant.com

<http://www.courant.com/news/politics/hc-veto0712.artjul12,0,7698900.story?coll=hc-headlines-politics-state>

Late-Night Amendments Earn Vetoes

Rell Torpedoes Legislative E-Mail Shield, Ruling Reversal

By MARK PAZNIOKAS
Courant Staff Writer

July 12 2005

Gov. M. Jodi Rell vetoed two bills Monday because of late-night amendments that would have reversed a contentious state regulatory decision and exempted legislative e-mails from the Freedom of Information Act.

An amendment to the vetoed telecommunications bill would have negated two regulatory rulings ordering SBC Connecticut to provide Gemini Networks access to a hybrid fiber-coaxial network largely abandoned by SBC in 2001.

Gemini, a startup company financed by millionaire investor Arnold Chase, had complained to Rell's office that a state utility official had overstepped his authority when he advised a state senator on the drafting of the amendment.

"In light of the unresolved questions concerning this legislation, I believe it is preferable to veto Senate Bill 1097 - offering the General Assembly in the next legislative session the opportunity to ratify its action in passing the bill," Rell said in her veto message.

SBC officials appeared stunned by the veto of a bill passed unanimously by the Senate and 144-4 by the House in the final days of the legislative session that ended June 8.

SBC could seek a veto override.

"I think it's a very sad day when somebody can make an unsubstantiated allegation, and people respond to that," said John Emra, the executive director of external affairs for SBC. "That's apparently the new way to lobby in Connecticut, and I find that really sad."

The body of the bill, S.B. 1097, would have freed SBC from some regulatory controls, allowing the telephone company to compete with cable companies that provide video, internet and telephone services.

"We're going to lose hundreds of thousands of customers," Emra said. "We lost 400,000 lines in 3½ years. We are losing thousands more every single day."

Chase applauded the veto as an act restoring integrity to the legislative process.

"It was absolutely the correct thing for the governor to do. It restores my faith in the legislative process," Chase said. "There were so many unanswered questions."

Sen. John Fonfara, D-Hartford, the co-chairman of the energy and technology committee, said he offered the amendment because he believed it would foster competition.

He said Monday that his opinion had not changed.

Fonfara said his amendment would have forced the sale of the unused network, which was built by SNET to provide cable television services. It was intended to carry telephone services, but after acquiring SNET, SBC decided the technology was unsuitable.

The amendment would have vacated a ruling by the Department of Public Utility Control ordering SBC to lease the network to Gemini.

Fonfara said that Jack R. Goldberg, the state's telecom regulator, had advised him that SBC was likely to persuade federal regulators to overturn the DPUC order, which had been written by Goldberg.

Rell referred Chase's complaint about Goldberg to the State Ethics Commission, which told the governor that it had no jurisdiction. Goldberg, who has recused himself from further actions involving the Gemini-SBC case, denied any wrongdoing.

But Rell, who said she was not passing judgment on Goldberg, said she could not afford to sign the bill into law.

"The conduct of state officials in a manner reflecting the highest regard for ethics and integrity has been a hallmark of my administration," Rell said.

Rell did not hesitate to characterize the other amendment - a measure exempting legislative e-mails from the right-to-know law - that prompted her veto.

She called it a "rat," legislative parlance for a favor slipped into a bill, usually in the chaotic last moments of a legislative session.

The secrecy provision was tacked onto a little-noticed bill about conservation officers and sent speeding through the legislature, taking just 22 minutes to pass both chambers on the last night of the session.

The measure never was subject to a public hearing.

"This is a classic legislative 'rat' - a last-minute bill intended to slip past without being noticed. It is a blatant attempt to sidestep the spirit of Connecticut's FOIA provisions, and it is utterly unacceptable," Rell said. "The bill would do nothing to protect constituent privacy while decreasing public scrutiny of government operations."

Rell also vetoed a bill Monday that would have authorized a study of the Connecticut Juvenile Training School. She said the bill would have duplicated a review already underway by her order.

"We have neither the time nor the resources to engage in the promotion of meaningless bureaucracy, especially when a plan concerning the future of CJTS is less than a month away from completion," she said.

Rell said a provision of the bill prohibiting the school from being used as an adult prison was unnecessary.

"As long as I am governor, that facility will never be used for an adult prison," she said.

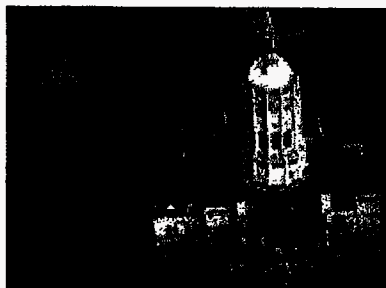
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nbc30.com

Rell Vetoes Bills On Telecommunications, E-Mail

POSTED: 8:39 am EDT July 12, 2005

HARTFORD, Conn. -- Gov. M. Jodi Rell on Monday vetoed legislation that would have revised state law to free SBC Communications Inc. from regulations that do not apply to new competitors to the company.



The governor also vetoed legislation that would have shielded e-mails of legislators and their staffs from disclosure under Connecticut's Freedom of Information Act. The bill involving SBC, which was a high priority for the San Antonio, Texas-based firm, became

shored in the final days of the legislature's regular session last month in a dispute between SBC and a competitor seeking access to an abandoned video network.

Rell said in her veto message that she was contacted by a lawyer for that competitor, Gemini Networks Inc. of Hartford, who said Jack Goldberg, a commissioner of the state Department of Public Utility Control, was involved in "negotiations and agreements" related to the legislation while action was pending before the DPUC. Rell asked the State Ethics Commission to review the accusations, but the commission said it does not have jurisdiction. The Judicial Review Council also said it had no jurisdiction or authority, the governor said in her veto message to Secretary of the State Susan Bysiewicz.

"In light of the unresolved questions concerning this legislation, I believe it is preferable to veto" the bill, she said. Monday was the deadline to act, she said.

Rell would not judge Goldberg, but vetoed the bill to "exercise caution and act in such a way as to preserve the integrity of the legislative process and Connecticut laws" by vetoing the bill. Rell promised to sign the bill if the legislature passes it next year, "ratifying its action."

Goldberg would not comment.

The veto is a blow to SBC, which lobbied hard for the bill. It said it has lost more than 325,000 access lines in Connecticut in the last four years to an exploding number of unregulated cellular, cable and Internet competitors. Changing the law would have given consumers more choices, SBC said. John R. Emra, SBC's lobbyist, was angry at the veto. "It's bad for Connecticut's consumers. They will not get choices and lower prices," he said. He called the questions raised by Gemini about Goldberg "unfounded and untrue allegations."

GOV. JODI REL



Bio

Party: Republican

Age: 58

Residence: Brookfield

Education: Old Dominion University, Western Connecticut State University; no degree.



Experience: Lt. Gov., 1995-present; state House of Representatives, 1984-94.

Family: Husband, Lou; two children.

New Course

-  Rell's 'New Course'
-  Rell's Speech
-  Rell Takes Oath

Interact

-  Discussion
-  Gov. Jodi Rell

The bill would have eliminated a requirement that SBC provide cost studies each time it proposes a service or raises or cuts prices. SBC also would have been free of a requirement that the DPUC has up to 21 days to act on a filing by SBC while the time limit for competitors is five days. Competitors and consumer advocates opposed the bill, which overwhelmingly passed the Senate and House of Representatives.

Richard Rowlenson, vice president of Gemini, said the legislation, if signed by Rell, would have put his company out of business. Gemini won regulatory battles seeking access to the networks. Rowlenson said the victories would have been wiped out by a sentence added to the bill prohibiting state regulators from requiring SBC to lease the network.

In other business, Rell criticized the bill that would have protected e-mails of lawmakers and their staffs from disclosure.

"This is a classic legislative 'rat,' a last-minute bill intended to slip past without being noticed," the governor said in a statement. "It is a blatant attempt to sidestep the spirit of Connecticut's FOIA provisions and it is utterly unacceptable. The bill would do nothing to protect constituent privacy while decreasing public scrutiny of government operations."

Several legislators had said they were concerned about the privacy of constituents, especially after receiving requests for e-mails received on emotional issues such as civil unions for same-sex couples. Other lawmakers who endorse privacy for their constituents had said the exemption was too broad.

Rell on Monday also vetoed a bill calling for a review of the future of the Connecticut Juvenile Training School, saying it duplicates the work of a study she ordered that has been under way since April. The governor said a provision of the bill prohibiting the school from being used as an adult prison also is unnecessary. She said she does not expect or will accept a report from Darlene Dunbar, commissioner of the Department of Children and Families, that recommends transforming the juvenile training school into an adult correctional facility. The 240-bed center in Middletown has faced problems since it opened in the summer of 2001. Critics have complained it is more like a prison than a reform school, and the \$57 million facility was one of the projects scrutinized in the federal corruption investigation of former Gov. John G. Rowland's administration.

"As long as I am governor, that facility will never be used for an adult prison," she said in a statement.

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